IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 2554 of 1996

Between:

1. Seelam Laxminarayana, S/o. Aduvaiah.
   R/o. Goshamahal, Hindinagar,
   Hyderabad.
2. K. Rajamma, S/o. K.Balaiah.
   R/o. Hindinagar, Goshamahal,
   Hyderabad.

..... PETITIONERS

AND

1. Govt. of A.P., Rep. Secretary.
   Dept. of Revenue, Secretariat Buildings,
   Hyderabad.
2. The Mandal Revenue Officer, Musheerabad, Mandal,
   Hyderabad.
3. Syed Shew Abdul Letheef, (dismissed) C/o. Veerabadra Rao.
   Advocates Association, Secunderabad.
4. The Wakf Board, Rep. Secretary.
   Nampally, Hyderabad.

.....RESPONDENTS

The Court made the following:

ORDER:

The case of the petitioners is that Mohd. Abdul Rahman, and Mohd. Ghousuddin, sons of late Gulam Mohammed were the pattadars of the land in Survey No.60/1 of Nampally village and that they sold their lands to A. Ramakrishna under a Registered Sale deed dated 19.06.1963, who subsequently sold the same to Mohd. Basalatullah under a Registered Sale deed dated 12.09.1963 and that the said Mohd. Basalatullah sold 200 square yards each, from out of that land to the wife of the first petitioner and to the son of the second petitioner under registered Sale deeds dated 19.10.1966 and put them in possession thereof and that the Mandal Revenue Officer, Musheerabad Mandal (second

respondent) issued proceedings No.B1/915/96, dated 5.2.1996 under Section 7 of the A.P. Land Encroachment Act, 1905 (the Act) directing them to vacate the land in their possession alleging that they are in unauthorized occupation of the land belonging to the Government, when in fact the said land does not belong to the Government, and so they are obliged to file this petition because the proceedings impugned were issued without affording an opportunity of being heard, by making the third respondent also party since he also is making a claim to the property in their possession.

2. Petition against the third respondent was dismissed for default as per court order dated 23.03.2000.

3. Second respondent filed his counter-affidavit on behalf of the respondent Nos.1 and 2 alleging that since 370 sq.mtrs, in T.S.No.14, Block-C, Ward-47 and 413 sq.mtrs. in T.S.No.15 Block-C, Ward-47 which are government lands are encroached upon by the petitioners, notices under Section 7 of the Act were issued to them, asking them to remove the encroachments within seven days from the date of receipt of the notice, and informing them that if they were to fail to do so, action would be taken under Section 6 of the Act, and since petitioners filed this petition without submitting an explanation to the notices under Section 7 of the Act the same is liable to be dismissed.

4. The main contention of the learned counsel for the petitioners is that since petitioners and their predecessors-in-title have been in longstanding possession of the land in question, even assuming that the said land belonged to the Government, petitioners cannot be evicted by taking recourse to the provisions of the Act in view of the ratio in ***Government of Andhra Pradesh v. Thummala Krishna Rao and another,*** and in any event since Government is claiming title to the property only basing on the entries in TSLR, which *per se* cannot form the basis for claiming title to a property, and since this Court quashed the proceedings under the Act in a similar situation in **Kishan Chand Foundation Trust, Hyderabad v. District Collector, Hyderabad**, notices impugned in this petition are liable to be quashed. It is also his contention that the notices impugned in this petition, by no stretch of imagination, can be said to be notices under Section 7 of the Act, because they in fact are not show cause notices, but are orders of eviction of the petitioners from the lands in their possession. Relying on ***Ravipudi Abbayya v. State of Andhra Pradesh, represented by the Collector, Guntur and others*****,** he contended that since the procedure mentioned in the said decision is not followed, petitioners are entitled to the relief sought.

5. The main contention of the learned Assistant Government Pleader for Revenue is that

since the land in respect of which the notices impugned are issued are in respect of T.S.No.14 and 15, Block-C, and since petitioners claim that they purchased land in Survey No.60 and 60/1, and since they failed to produce any document to show that the said survey numbers correspond to T.S.No.14 and 15, which as per the TSLR correspond to old S.No.58/P, petitioners, *prima facie*, have no right to be in possession of T.S.Nos.14 and 15 and so they were served with the notices impugned and since petitioners filed this petition even without issuing a reply to the show cause notice, and the remedy of appeal, in the event of their reply to the show cause notice not being accepted, this petition is not maintainable and placed strong reliance on **Special Director and another v. Mohd. Gulam Ghouse and another** in support of his contention that a writ petition, against a show cause notice is not maintainable.

6. Petitioners, admittedly, filed this petition immediately after receiving the notice impugned even without sending a reply thereto, basing on a ground that the notices impugned are not in accordance with Section 7 of the Act, and so they cannot be treated as a show cause notices and in fact are final orders, because by those notices they are ordered to vacate the premises, in their possession, placing strong reliance on Board Standing Orders (BSO) 26 (3), which reads:

> ***Notice under Section 7 of Act III of 1905****:- Separate notices under Section 7 of the Act should be served on each occupant. Such notices may be issued by the Tahsildar of the taluk, or the Deputy Tahsildar of the sub-taluk or taluk in which the land is situated, in cases in which he is himself competent to pass orders and in other cases if he has been authorized in that behalf by a general or special order of the Collector.*
>
> *A notice issued by a Tahsildar or Deputy Tahsildar, may either require the party to whom it is directed to show cause in person or in writing before the Collector, or may require him to show cause before the Tahsildar or Deputy Tahsildar issuing the notice. The Collector will, by general order, specify the classes of cases in which the notice must require cause to be shown before himself. If the party appears in person before the Tahsildar or Deputy Tahsildar, that officer shall record the statement of the party and any evidence he may adduce, and shall pass orders in cases in which he is himself competent to do so. In other cases, he shall submit the record with his opinion to the Collector, who may himself make such further enquiry as he may deem fit.*
>
> *The notice under Section 7 shall require the party to show cause why he should not, in addition to the full assessment on the land under Section 3 (i) [or, if the land is not assessed, in addition to the rate prescribed by or under section 3(ii) of the Act], pay the penalty which may be imposed under section 5 or (or 'and' as the case may be) be subjected to eviction from the land and forfeiture of the crops, products, buildings, constructions and things deposited thereon under section 6 of the Act. A form of notice will be found in Appendix XXXII.*

APPENDIX XXXII

(Standing Order No.26 Paragraph 3)

(Notice under Section 7 of the A.P. Act-III of 1905)

To

Residing in village, taluk. Whereas you are reported to be unauthorized occupation of the land specified in the schedule below, which is the property of Government, you are hereby given notice that if you so desire you may, before 19, show cause either in person or in writing before me/the Collector why you should not in addition to the full assessment on the land under Section (3) (i) of the Act to the rate prescribed by or under Section (3)(ii) of the Act be charged a penalty for such occupation under Section 5 of the Act III of 1905 and/or be subjected to eviction from the land and forfeiture of the crops, products, building, constructions and things deposited thereon under Section 6 of the said Act.

SCHEDULE

-

-

Village	*Survey No.Sub-division*	*DescriptionOf land*	*Entire ExtentAcs. Cts*	*OccupiedExtent Acs. Cts*	*NatureOf Occupation*

Note:- This notice should be served by delivering a copy to the occupier of the land referred to, or to some adult male member of the family, at his usual place of abode, or to his authorized agent, or by affixing a copy thereof to conspicuous part of his last known residence, or on some conspicuous part of the land occupied.

8. Since BSOs are nothing but executive instructions as held in **Government of Andhra Pradesh and another v. Syed Akbar**, they cannot override the provisions of a statute and so appendix XXXII to the B.S.O. cannot override the provisions of the Act. The notices impugned in this petition read:

GOVERNMENT OF ANDHRA PRADESH

REVENUE DEPARTMENT

No.B1/915/96, OFFICE OF THE

MANDAL REVENUE OFFICER

MUSHEERABAD MANDAL

DATED : 5.2.1996

NOTICE UNDER SECTION (7) OF A.P.L.E. ACT OF 1905

To

Sri K. Balaiah, S/o late K. Narsaiah,

R/o 5-5-212/10, Patel Nagar,

Gandhi Bhavan, Nampally, Hyderabad.

(Village, Musheerabad Mandal, Hyderabad District) whereas you are in unauthorized occupation of the land specified is scheduled below, which is the property of Government. You are hereby given Notice to remove all the materials from the site and vacate it within (7) days, from the date of receipt of the Notice, failing which action U/s.6 of the said Act will be taken.

S C H E D U L E

Village	Sy. No. & T.S.No	Description of land	Entire extentAc. Gts	Occupied Ac. Gts	Nature of occupation
Nampally	T.S.16Block 'C'Ward-47	Kharijkhatha(Govt. Land)	413sq.mtrs	413sq.mtrs 494sq.yds.	CommercialUnit

GOVERNMENT OF ANDHRA PRADESH

REVENUE DEPARTMENT

No.B1/915/96, OFFICE OF THE

MANDAL REVENUE OFFICER

MUSHEERABAD MANDAL

DATED: 5.2.1996

NOTICE UNDER SECTION (7) OF A.P.L.E. ACT OF 1905

To

Smt. S. Balamani, W/o Laxminarayana

R/o 5-5-212/10, Patel Nagar,

Gandhi Bhavan, Nampally, Hyderabad.

(Village, Musheerabad Mandal, Hyderabad District) whereas you are in unauthorized occupation of the land specified is scheduled below, which is the property of Government. You are hereby given Notice to remove all the materials from the site and vacate it within (7) days, from the date of receipt of the Notice, failing which action U/s.6 of the said Act will be taken.

S C H E D U L E

Village	Sy. No. & T.S.No	Description of land	Entire extentAc. Gts	Occupied Ac. Gts	Nature of occupation
Nampally	T.S.14Block 'C'Ward-47	Kharijkhatha(Govt. Land)	370sq.mtrs	370sq.mtrs 442sq.yds.	CommercialUnit

9. Significantly, neither K. Balayya nor Smt S. Balamani, to whom the above notices are issued, are the petitioners. From the averments in the affidavit filed in support of this petition, it is seen that Smt. S. Balamani is the wife of the first petitioner and K. Balayya is the son of the second petitioner. So, it is clear that the writ petition is filed by the spouse and son of the noticees, but not by the noticees. So simply, on the ground that petitioners are not the noticees, and since the noticees, who can be said to be the person aggrieved by the notices impugned have not filed this petition, this petition is liable to be dismissed.

10. Even otherwise also, this petition has no merit as I am not able to agree with the contention of the learned counsel for the petitioner that the notices impugned are not in accordance with the mandate in Section 7 of the Act, because Section 7 has to be read in conjunction with Section 6 of the Act. Therefore, I feel it necessary to extract Sections 6 and 7 of the Act. They read:

> ***6. Liability of person unauthorizedly occupying land to summary eviction, forfeiture of crops, etc****:- (1) Any person unauthorizedly occupying any land for which he is liable to pay assessment under Section 3 may be summarily evicted by the Colector, Tahsildar or Deputy Tahsildar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct.*

(2) ***Mode of Eviction:-*** *An eviction under this section shall be made in the following manner, namely:- By serving a notice in the manner provided in Section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction shall continue, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period:*

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

7. Prior notice to person in occupation*:- Before taking proceedings under Section 5 or Section 6, the Collector of Tahsildar, or Deputy Tahsildar, as the case may be shall cause to be served on the person reputed to be in unauthorized occupation of land being the property of Government, a show cause notice specifying the land so occupied and calling on him to show cause before a certain date why should not be proceeded against under Section 5 or Section 6.*

Such notice shall be served in the manner prescribed in Section 25 the Andhra Pradesh Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or order under Section 8 may direct.

So it is clear that Section 6 of the Act can be invoked both for levy of penal assessment under Sections 3 and 5 of the Act and eviction also can be made under Section 6 of the Act, but in either case, as per Section 7 of the Act, the person in unauthorized occupation of the government land must be put on notice about the action intended to be taken against him, as a consequence for his unauthorized occupation of the government land, before the date to be specified therein, and such notice has to be served as per the procedure prescribed in section 25 of the A.P. Revenue Recovery Act 1864. Therefore, the contention that the notices impugned are in fact are orders of eviction but not notices contemplate by Section 7 of the Act cannot be accepted, because they clearly show that they are notices under Section 7 of the Act and since they contemplate a further action as per Section 6 of the Act being taken after seven days of receipt of the notices by the noticees. Information to the person in possession that action under Section 6 of the Act would be taken after the

date mentioned in the notice, is sufficient compliance with the provisions of Section 7 of the Act, even though the same does not contain the specific word 'show cause' why action should not be taken under Section 6 of the Act. If in response to the said notice, the noticees were to say why they cannot be removed under Section 6 of the Act, the same would be inquired into by the notice issuing authority.

11. If the petitioners to whom no notice either under Section 7 or Section 6 of the Act is issued felt aggrieved by the notices issued to their spouse and mother respectively. When they claim to be owners of the land covered by the impugned notices, their remedy is to file a suit for declaration of their title to the land covered by the notices, but they cannot by filing a writ petition question the notices issued to others, that too without explaining the reasons for the noticees not joining them as parties to this petition.

12. The ratio in **Rayapuddi Abbayya** case (3rd supra) is that proceedings under Section 6 of the Act cannot be initiated without issuing a notice under Section 7 of the Act. Since the noticees in this case were asked to vacate the encroached land within seven days, if the noticees felt that they are not encroachers and are the owners of the property, they should have produced the relevant material before the second respondent and should have claimed that they need not be asked to vacate. They did not do so.

13. The facts in **Kishan Chand Foundation Trust, Hyderabad** case (2nd supra) are entirely different from the facts of the case. For a notice under Section 7 of the Act, the noticees in that case sent a reply, and the concerned authority after considering the said reply passed an order under Section 6 of the Act. In the circumstances of that case, it was held that the authority invoking the provisions of the Act in respect of the land therein, that too when there was no valid service of the order under Section 6 of the Act on the person concerned, is bad. Petitioners cannot take shelter under the said decision because they are not the noticees in this case.

14. The decision relied on by the learned Government Pleader for Revenue need not be discussed because petitioners are not the noticees and are third parties to the notices impugned.

15. Hence, the writ petition is dismissed with costs.

_____

(C.Y. SOMAYAJULU, J)

Date: 14.09.2005

Ksn